as well as to the corporation, reaches the seemingly inconsistent result of giving the wrongdoer equitable relief.

USURY — FORFEITURES — RELEASE OF RIGHT TO SUE FOR PENALTY. — In an action to recover for usury paid, the defendant pleaded a release of all claims for usury. The consideration for the release was a fresh usurious loan. *Held*, that the release is binding. *Cotton* v. *Beatty*, 162 S. W. 1007 (Tex.).

The right to recover usury paid may be waived by a release given for good consideration. *Broadwell's Adm'rs* v. *Lair*, 10 B. Mon. (Ky.) 220; *Wing* v. *Peck*, 54 Vt. 245. When, however, as in the principal case, the consideration for the release is a fresh usurious loan, the whole transaction should be void, and the release should be ineffective. *International Building & Loan Ass'n* v. *Biering*, 86 Tex. 476, 25 S. W. 622. Indeed, releasing the claim is in effect an added sum paid for the fresh loan and might well in itself change a legal rate of interest into an usurious rate. *Cf. Schroeppel* v. *Corning*, 5 Denio (N. Y.) 236, 247. The result of the principal case is to cure usury with usury. It seems indeed strange that a court should be deceived by so transparent a device for evading the law.

WILLS — CONSTRUCTION — PARTICULAR WORDS: "CHILDREN" HELD TO MEAN ONLY LEGITIMATE CHILDREN. — The testatrix by will left property in trust for "all or any the children or child" of her brother. He had six illegitimate children by a woman who was commonly accepted as his wife, and two legitimate children by a subsequent marriage. The testatrix supposed the children were all legitimate. *Held*, that only the two legitimate children are entitled. *In re Pearce. Alliance Assurance Co.* v. *Francis*, [1914] 1 Ch. 254 (C. A.).

The principal case illustrates the operation of the well-established rule of construction that the word "children" in a will means, *prima facie*, legitimate children. *Cartwright* v. *Vawdry*, 5 Ves. 530; *Collins* v. *Hoxie*, 9 Paige (N. Y.) 81; *Heater* v. *Van Auken*, 14 N. J. Eq. 159. See 2 JARMAN ON WILLS, 5 Am. ed., 786, 6 Eng. ed., 1748; 2 WILLIAMS ON EXECUTORS, 7 Eng. ed., 1099. The cases, however, allow this presumption to be rebutted in but two ways. The illegitimate may take if the language of the will shows such an intent, either expressly, or by necessary implication, as, for example, "all the children of her body." *Sullivan* v. *Parker*, 113 N. C. 301, 18 S. E. 347. See *Hill* v. *Crook*, L. R. 6 H. L. 265, 283. Mention of the children by name is likewise an example of this class. *Meredith* v. *Farr*, 2 Y. & C. Ch. 525; *Williams* v. *MacDougall*, 39 Cal. 80. Or the presumption may be overcome if there are no legitimate children, and the particular legacy or devise would otherwise fail. *In re Eve*, [1909] 1 Ch. 796; *Gardner* v. *Heyer*, 2 Paige (N. Y.) 11. See *Hill* v. *Crook*, *supra*, 282. But the House of Lords refused to include within the latter class a case where the testator, when the will was made, might possibly have contemplated lawful children, although none in fact were ever born. *Dorin* v. *Dorin*, L. R. 7 H. L. 568. See *Ellis* v. *Houston*, L. R. 10 Ch. Div. 236, 243. Extrinsic evidence of intent to include illegitimates is generally held inadmissible. *Ellis* v. *Houston*, *supra*; *Collins* v. *Hoxie*, *supra*. Thus the court here was clearly bound by authority. As an original question, however, it would seem that this presumption should be rebuttable by evidence of the circumstances under which the will was executed. See *In re Scholl's Estate*, 100 Wis. 650, 661, 76 N. W. 616, 619; 4 WIGMORE, EVIDENCE, § 2463.

WITNESSES — IMPEACHMENT — CHARACTER EVIDENCE TO SUSTAIN WITNESS IMPEACHED BY ADMISSION OF FORMER CONVICTION ON CROSS-EXAMINA-

TION. — The plaintiff, as a witness in his own behalf, admitted upon cross-examination that he had been convicted of the crime of forgery and served a term in the state prison. On the theory that his character had been impeached, he then sought to introduce evidence of his general reputation for truth. *Held*, that the evidence is inadmissible. *Derrick* v. *Wallace*, 145 N. Y. Supp. 585 (Sup. Ct. App. Div.).

Evidence of a witness's reputation for truth is not admissible until his character has been impeached. *State* v. *Owens*, 109 Ia. 1, 79 N. W. 462. Contradictory evidence, or proof of inconsistent statements out of court, or inconsistencies elicited on cross-examination, are as consistent with mistaken observation as with untruthfulness, and, if they involve the character of the witness at all, do so only incidentally. Thus, in these situations it is held not worth while prolonging the trial with evidence of his good reputation. *Russell* v. *Coffin*, 8 Pick. (Mass.) 143; *Tedens* v. *Schumers*, 112 Ill. 263. *Contra*, *George* v. *Pilcher*, 28 Gratt. (Va.) 299. Where, however, the attack is directed at the witness himself, by proof of collateral matter showing him to be the kind of man whom the jury ought not to believe, the party calling him should be permitted to sustain the witness's character by evidence of his reputation for veracity. *Webb* v. *State*, 29 Oh. St. 351. And although the attack is by proof of specific, discrediting acts, nevertheless his character is directly involved. *Gertz* v. *Fitchburg R. R.*, 137 Mass. 77. The suggestion of the principal case that, where these facts are elicited on cross-examination the only method of rehabilitation should be by redirect examination to explain them, is unsound. The only bearing of these former crimes upon the credibility of his testimony is by inference to the witness's bad character. *Kraimer* v. *State*, 117 Wis. 350, 93 N. W. 1097; *People* v. *Amanacus*, 50 Cal. 233. Where, as in the principal case, the discrediting acts occurred some years back, the witness should at least be permitted to show that he has since acquired a good reputation for truth. *Shields* v. *Conway*, 133 Ky. 35, 117 S. W. 340; 2 WIGMORE, EVIDENCE, § 1117. For a review of the authorities, see 2 WIGMORE, EVIDENCE, § 1106.

BOOK REVIEWS.

THE PRINCIPLES OF JUDICIAL PROOF. By John Henry Wigmore. Boston: Little, Brown, and Company. 1913. pp. xvi, 1179.

This important and most interesting book "aspires to offer, though in tentative form only, a *novum organum* for the study of Judicial Evidence." No one living has such qualifications for this work as Professor Wigmore, and by his present attempt he has not a little increased the great debt which scholars and practitioners already owe him.

The introduction emphasizes the distinction between Proof in the general sense — the process of persuading the mind by reasoning — and Admissibility — determined by rules of law aimed to protect the tribunal from erroneous persuasion and waste of time. These rules of admissibility, with which our law of evidence is concerned, "are destined to lessen in relative importance during the next generation or later. Proof will assume the important place; and we must therefore prepare ourselves for this shifting of emphasis." The experience of continental Europe in its change from "the ancient worn-out numerical system of 'legal proof'" to "the so-called 'free proof,' namely, no